

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHARUSORN CHONGCHITMATE §
§
Plaintiff, §
§
§ CIVIL ACTION NO. 1:23-cv-12
v. §
§
RD AMERICA, LLC and JOHN DOE §
§
Defendants. §

DEFENDANT'S NOTICE OF REMOVAL

Defendant, RD America, LLC (“RD America” or “Defendant”) files this Notice of Removal pursuant to 28 U.S.C. § 1446(a). In support, RD America respectfully states as follows:

I. Background and Procedural Requirements

1. On November 15, 2022, Plaintiff Charusorn Chongchitmate (“Plaintiff”) filed his Original Petition in the 53rd Judicial District Court of Travis County, Texas, styled, *Charusorn Chongchitmate v. RD America, LLC and John Doe*, Cause Number D-1-GN-22-006598. (A true and correct copy of Plaintiff’s Original Petition is attached hereto as Exhibit A, and incorporated by reference herein for all purposes).

2. RD America was served on December 5, 2022. RD America files this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b)(1); *Bd. Of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

3. Pursuant to 28 U.S.C. § 1446(a), all pleadings process, orders and all other filings in the state court action are attached in this Notice, including the following particularized items:

- a. A copy of Plaintiff's Original Petition, filed November 15, 2022 (Exhibit A);
- b. A copy of all orders issued by the Court and served on RD America (none);
- c. A copy of the state court docket sheet (Exhibit B);
- d. A list of all counsel of record, including addresses, telephone numbers and parties represented (Exhibit C);
- e. A copy of RD America and its Members' Certificates of Formation (Exhibit D);

4. The following documents have also been filed with the Notice of Removal pursuant to Federal Rule of Civil Procedure 7.1(b)(1) and Local Rule 3:
 - a. Civil Cover Sheet;
 - b. A Disclosure Statement on behalf of RD America.
5. Pursuant to 28 U.S.C. § 1445(d), written notice of filing RD America's Notice of Removal will be given to all adverse parties promptly after filing.
6. Pursuant to 28 U.S.C. § 1441(d), RD America will promptly file a copy of this Notice of Removal with the Clerk of the 53rd Judicial District Court of Travis County, Texas, where the action has been pending.

II. Grounds for Removal

7. Removal is proper because there is complete diversity between Plaintiff and Defendant and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a)(1); *Garcia v. Koch Oil Co. of Tex. Inc.*, 351 F.3d 636, 638 (5th Cir. 2003).

A. Complete Diversity Exists Between the Parties

8. According to Plaintiff's Original Petition, Plaintiff Charusorn Chongchitmate is a Texas citizen and individual residing in Travis County, Texas. *See* Ex. A ¶¶3; 28 U.S.C. §

1332(a). Thus, for purposes of diversity of citizenship, Plaintiff is a citizen of the State of Texas.

9. RD America is a Delaware limited liability company with its principal place of business in New York. As a limited liability company, its citizenship is determined by the citizenship of its members. *See e.g., Harvey v. Grey Wolf Drilling Co.*, 512 F.3d 1077, 1080 (5th Cir. 2008). For purposes of diversity, RD America is a Delaware citizen because RD America, LLC, and each of its members are all Delaware companies. *See Ex. D.* More specifically:

- a. RD America, LLC's sole member is Restaurant Depot, LLC, a Delaware limited liability company;
- b. Restaurant Depot, LLC's sole member is Jetro Cash & Carry Enterprises, LLC, a Delaware limited liability company;
- c. Jetro Cash & Carry Enterprises, LLC's sole member is Jetro Holdings, LLC, a Delaware limited liability company;
- d. Jetro Holdings, LLC's sole member is JRD Holdings, LLC, a Delaware limited liability company;
- e. JRD Holdings, LLC's sole member is JRD Unico, Inc., a Delaware corporation.

Therefore, complete diversity exists between Plaintiff and Defendant.

10. At the time of filing this Notice of Removal, upon information and belief, Defendant "John Doe" has not been identified or served with the underlying lawsuit filed in the 53rd District Court of Travis County, Texas. 28 U.S.C. § 1441(b)(2); *Texas Brine Co. v. American Arbitration Ass'n*, 955 F.3d 482 (5th Cir. 2020).

B. The Amount in Controversy Exceeds \$75,000

11. Plaintiff states, on the face of his pleading, that the damages relating to their negligence claims are "more than \$1,000,000." Ex. A ¶2; *De Aguilar v. Boeing*, 47 F.3d 1404,

1408 (5th Cir. 1995) (“[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith”). As such, RD America reasonably believes Plaintiff intends to plead damages “more than \$1,000,000” as provided in Texas Rule of Civil Procedure 47(c)(5). Therefore, the amount in controversy, as plead by Plaintiff, exceeds \$75,000.

III. Venue

12. Venue is proper in this district under 28 U.S.C. § 1441(a) because the state court where the action has been pending is located in this district.

IV. Conclusion

13. As there is a complete diversity between the parties and the amount in controversy exceeds \$75,000, RD America respectfully requests that this case be removed to this federal court.

Dated: January 4, 2023.

Respectfully submitted,

By: /s/ Daisy Khambatta
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**ATTORNEY FOR RD AMERICA,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served upon all counsel of record identified below in accordance with the Federal Rules of Civil Procedure on the 4th day of January, 2023:

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